

**NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.**
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

FEB -8 2010

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

NEALE E. SMITH,)	
)	2 CA-CV 2009-0149
Plaintiff/Appellant,)	DEPARTMENT A
)	
v.)	<u>MEMORANDUM DECISION</u>
)	Not for Publication
DPS OFFICER JOHNSTON, BADGE)	Rule 28, Rules of Civil
# 355; DPS OFFICER SEYLER,)	Appellate Procedure
BADGE # 334; DPS OFFICER)	
FRANZ, BADGE # 204; DPS)	
OFFICER COLLIER HILL;)	
BRYAN ALAN LONOWSKI;)	
JOHNSON BIA; CECILIA E. LOU;)	
FERNANDO MUNGUIA; ROY)	
FLORES; PIMA COMMUNITY)	
COLLEGE; PIMA COUNTY BOARD)	
OF SUPERVISORS; BARBARA)	
LaWALL; VARIOUS UNKNOWN)	
ASSISTANT PIMA COUNTY)	
PROSECUTORS; JANET)	
NAPOLITANO; TERRY GODDARD;)	
and STATE OF ARIZONA,)	
)	
Defendants/Appellees.)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. C-20065166

Honorable Virginia C. Kelly, Judge

AFFIRMED

Neale E. Smith

Tucson
In Propria Persona

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Defendant/Appellee LaWall and
Various Unknown Assistant
Pima County Prosecutors

E S P I N O S A, Presiding Judge.

¶1 Neale Smith appeals from the trial court's award of attorney fees to appellees. We affirm.

Factual and Procedural History

¶2 The facts of this case are set forth in another recent memorandum decision, *Smith v. Johnston*, Nos. 2 CA-CV 2009-0082, 2 CA-CV 2009-0086 (consolidated) (memorandum decision filed Feb. 5, 2010). This appeal pertains to the trial court's

amended ruling granting the college defendants their attorney fees and precluding Smith from filing any more pleadings or motions in the case.¹ We have jurisdiction pursuant to A.R.S. §§ 12-120.21(A) and 12-2101(C).

Discussion

¶3 Smith challenges the trial court’s “standing” and “authority” to make this ruling, essentially contending that, because he was not notified of a change in the judge assigned to his case, the newly assigned judge lacked jurisdiction to rule. This contention is without merit and contrary to authority. When a matter is properly brought before the court and assigned to a judge, that judge has jurisdiction to rule on it. *See State v. Superior Court*, 102 Ariz. 388, 392, 430 P.2d 408, 412 (1967). The presiding judge need not notify parties nor secure their consent to assign or reassign a judge to a case. *See Pima County Super. Ct. Loc. R. P. 6.3*. And a case assigned to one judge may be temporarily reassigned to another for the determination of an issue. *Pima County Super. Ct. Loc. R. P. 6.6*.

¶4 As articulated in our previous memorandum decision, the superior court ruled correctly when it dismissed Smith’s claim against the defendants. *See Smith v. Johnston*, Nos. 2 CA-CV 2007-0145, 2 CA-CV 2007-0061 (consolidated) (memorandum decision filed Sept. 19, 2008). The trial court’s dismissal was a final judgment on the

¹Smith filed a separate appeal challenging this order on its merits. *See Smith*, Nos. 2 CA-CV 2009-0082 & 2009-0086, ¶ 3.

merits, and our mandate to the trial court vested it with the authority to take such actions as necessary to comply with our memorandum decision. *Smith*, Nos. 2 CA-CV 2009-0082 & 2009-0086, ¶ 4. When Smith ignored our decision and attempted to relitigate the merits, the court administrator could rightfully, and without notice, temporarily assign the case to a different judge to dispose of the issue of Smith's meritless filings. *See* Pima County Super. Ct. Loc. R. P. 6.6. Moreover, even had Smith prevailed on appeal, the court administrator would have had the authority reassign the case to a different judge for resolution of the merits without notifying Smith or obtaining his consent. *See* Pima County Super. Ct. Loc. R. P. 6.5(b).

Disposition

¶5 Because the trial court did not act in excess of its jurisdiction or authority, the imposition of attorney fees is affirmed.

PHILIP G. ESPINOSA, Presiding Judge

CONCURRING:

JOSEPH W. HOWARD, Chief Judge

PETER J. ECKERSTROM, Judge